

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Matthew Alder,

Petitioner,

v.

Macomb County Circuit Court,

Civil Case No. 11-11523

Respondent.

Honorable Sean F. Cox

_____/

**ORDER TRANSFERRING SECOND OR SUCCESSIVE § 2254 PETITION
TO THE SIXTH CIRCUIT COURT OF APPEALS**

In 1995, Petitioner Matthew Alder (“Alder”) was convicted of first degree premeditated murder and first degree felony murder in Macomb County Circuit Court. He was sentenced to life imprisonment without the possibility of parole.

On or about October 17, 2001, Alder filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, in Case No. 01-40289. In that petition,, Alder challenged his conviction in the Macomb County Circuit Court and asserted five claims for relief.

The Honorable Paul Gadola denied Alder’s petition – on the merits – in a 40-page Opinion & Order issued on January 22, 2003. (*See* Docket Entry No. 26 in Case No. 01-40289). Judge Gadola denied Alder’s request for a certificate of appealability. (Docket Entry No. 46 in Case No. 01-40289).

Nevertheless, Alder filed an appeal. In an Order issued on or about October 20, 2003, the United States Court of Appeals for the Sixth Circuit declined to issue a certificate of appealability to Alder and dismissed the appeal. (Docket Entry No. 48). The United States

Supreme Court denied Alder's petition for a writ of certiorari on April 26, 2004.

Thereafter, Alder sought an order from the Sixth Circuit authorizing the district court to consider a successive petition for habeas corpus relief under § 2254. "In his request to file a third habeas petition, Alder contends that he is actually innocent of the crime of first degree murder based on new exculpatory evidence; that the prosecution admitted that Alder could be innocent, thus showing insufficient evidence to support the conviction; and that his appellate counsel was ineffective." *In Re: Matthew Lorne Alder*, No. 06-1043 at 1 (6th Cir. Aug. 1, 2006). The Sixth Circuit denied Alder's request for failure to satisfy the requirements of the statute. (*Id.*).

On April 4, 2011, Alder initiated this action by filing a "Complaint for Writ of Mandamus" under 28 U.S.C. § 1651. (Case No. 11-11523, Docket Entry No. 1). Alder again challenges his conviction in Macomb County Circuit Court, continues to assert that there was insufficient evidence to support his conviction and that the prosecution admitted that he could be innocent, and seeks release from confinement.

Before a second or successive habeas petition is filed in a federal district court, the petitioner must move in the appropriate court of appeals for an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). The district court must transfer any second or successive petition the court of appeals has not approved. *In Re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Here, although Alder indicates that he is bringing the instant petition pursuant to 28 U.S.C. § 1651, he cannot "use Section 1651 to circumvent the AEDPA's prohibition on the filing of an unauthorized or successive petition." *In Re Valeck*, 2006 WL 172222 (E.D. Mich. 2006); *Haliburton v. United States*, 59 Fed.Appx. 55, 56-57 (6th Cir. 2003). Alder is clearly seeking to

challenge the validity of his state court conviction and sentence after already having done so.

Alder has not, however, obtained authorization from the Sixth Circuit to file a second or successive petition in this Court. Thus, this Court lacks jurisdiction over this successive § 2254 petition and the matter must be transferred to the Sixth Circuit.

Accordingly, IT IS ORDERED that the Clerk of the Court shall TRANSFER this case to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

Dated: April 19, 2011

s/ Sean F. Cox
Sean F. Cox
U. S. District Court Judge

I hereby certify that on April 19, 2011, the foregoing document was served upon counsel of record by electronic means and upon Matthew Alder by First Class Mail at the address below:

Matthew Alder
246180
Kinross Correctional Facility
16770 S. Watertower Drive
Kincheloe, MI 49788

Dated: April 19, 2011

s/ Jennifer Hernandez
Case Manager